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Environment and Natural Resources
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90-11-3-07683/17

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November 21, 2023

By ECF

The Hon. Leda Dunn Wettre
United States Magistrate Judge
United States District Court for the District of New Jersey
Martin Luther King Building and U.S. Courthouse
50 Walnut Street, Room 4015
Newark, New Jersey 07101

Re: *United States of America, Plaintiff v. Alden Leeds, Inc., et al., Defendants, Passaic Valley Sewerage Commissioners, et al., Intervenors.* No. 22-cv-7326-MCA-LDW

Dear Magistrate Judge Wettre:

The United States submits this letter in response to the Court's Order of October 16, 2023, in the above-captioned case. ECF No. 267. In its Order, the Court directed the United States to, no later than November 21, 2023: (1) notify the Court whether the United States will file a motion to enter the proposed Consent Decree and (2) file a proposed schedule for the next steps.

I. Whether the United States Will File a Motion to Enter

The United States has evaluated the public comments submitted during the 90-day public comment period that closed on March 22, 2023, along with similar correspondence received through March 24, 2023. In large part, the comments do not disclose facts or

considerations which indicate that the proposed Consent Decree is inappropriate, improper, or inadequate.

However, the United States concluded, based on the public comments, that aspects of the Consent Decree should be modified prior to entry. Accordingly, the United States has informed the Settling Defendants that a small number of parties should be removed from the Consent Decree and a change should be made to the United States' reservation of rights.

The Settling Defendants have agreed to the modifications. Subject to execution and final approval by the Settling Defendants and authorized officials at DOJ and EPA, the United States intends to file a Motion to Enter the modified Consent Decree no later than January 31, 2024. The United States' proposed briefing schedule is set forth below.

Because the modifications are responsive to comments received during the comment period that closed on March 22, 2023, the United States will not solicit additional public comments on the modified Consent Decree.

II. Proposed Schedule

As directed by the Court at the status conference held on October 16, 2023, the United States has conferred with the Settling Defendants and the Intervenors regarding the proposed briefing schedule for the Motion to Enter:

- The Settling Defendants do not object to the United States' proposed schedule. They propose some additions, which are set forth below.
- Intervenor Passaic Valley Sewerage Commissioners does not object to the United States' proposed schedule.
- Intervenors Nokia of America Corporation and Pharmacia, LLC do not object to the proposed Deadline for the United States to file a modified Consent Decree and Motion to Enter the Modified Consent Decree, along with the Public Comments and the United States' Responses to Comments and the page limit for the Memorandum in Support of Motion to Enter. However, they reserve their rights to

propose alternatives or modifications to the remainder of the United States' schedule.

- Intervenor Occidental Chemical Corporation ("OxyChem") objects to the United States' proposed schedule. OxyChem asks for 60 days to file Responses to the Motion to Enter and a page limit of 75 pages for such Responses. OxyChem provided additional comments in a redline of a prior draft of this letter. Per OxyChem's request, its comments are enclosed in Exhibit A.

The United States' Proposed Briefing Schedule

- **Deadline for the United States to file a modified Consent Decree and Motion to Enter the Modified Consent Decree, along with the Public Comments and the United States' Responses to Comments.** On or before January 31, 2024. Memorandum in Support of Motion to Enter page limit: 50 pages.
- **Deadline to file Responses to the Motion to Enter.** 30 days after the Motion to Enter is filed. Page limit: 40 pages.
- **Deadline of the United States and any party that filed a Response to file Briefs in Reply to any Responses to the Motion to Enter.** 30 days after the deadline to file Responses to the Motion to Enter. Page limit: 30 pages. No sur-reply brief may be filed without first obtaining leave of the Court.
- **Motions in Limine, Motions for Discovery and/or an Evidentiary Hearing, and Similar Procedural Motions.** No such motion may be filed without first obtaining leave from the Court. Requests for leave may be filed no sooner than seven days and no later than 14 days after the deadline to file Briefs in Reply to any Responses to the Motion to Enter.

Settling Defendants' Proposed Additions to the United States' Proposed Schedule

- **Deadline to file Motions Regarding the Effect of the Proposed Settlement.** 30 days after the deadline to file Briefs in Reply to any

Responses to the Motion to Enter or 30 days after any sur-replies to the Motion to Enter, whichever is later.

- **Deadline to file Responses to Motions Regarding the Effect of the Settlement.** 30 days after the Motion Regarding the Effect of the Settlement is filed.
- **Deadline to file Briefs in Reply to any Responses to Motions Regarding the Effect of the Settlement.** 14 days after the deadline to file Responses to the Motion Regarding the Effect of the Settlement.

The United States thanks the Court for its time and attention to this matter.

Respectfully submitted,

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cc: Counsel of Record (By ECF)

Enclosure